

1905-005 Chancery Causes: Gdn. of Ray DeBusk & by vs. M. M. Thomas & Lee Co.

Burk, Smith, Surgener

CA - Estate Dispute
T - Property

To the Hon. H. A. W. Skeen, Judge of the Circuit Court
for Lee County, Virginia.

Humbly complaining your orator Harvey DeBusk, guardian
for Ray DeBusk, aged five years and Daisy DeBusk, aged three years,
children of your orator and his wife Emma DeBusk, deceased. Would
respectfully represent and show unto your honor that N. M. Thomas, f
father of the said Emma DeBusk, deceased, and Nancy J. Thomas, moth-
er of the said Emma DeBusk, deceased, were seized and possessed of
a certain tract of parcel of land lying and being in Lee County,
Virginia on Yellow Branch, ^{containing 100 acres, more or less.} and that the said N. M. Thomas owned the
and Nancy J. Thomas owned the said land jointly, and that the
said Nancy J. Thomas departed this life intestate on the _____
day of _____, 1886, and her interest in said tract of land,
subject to the like estate of N. M. Thomas, ^{the} by courtesy, descended to
her children, to-wit: C. V. Burk, nee Thomas; wife of S. T. Burk,
Dora Burk, nee Thomas wife of Ora Burk, R.P. Thomas and the said
Emma DeBusk, nee Thomas, deceased, who was the wife of your orator.
Thus a one-fourth interest in a moiety of the said tract of land de-
scended to the said Emma DeBusk, mother of your orator's said wards,
and the said Emma DeBusk, deceased having afterwards departed this
life her undivided one-fourth interest in the said tract of land
descended to her said two children, subject to the life estate of your
orator, which life estate is subject to the life estate of N. M.
Thomas in the entire moiety of the said tract of land; that said
tract of land has never been partitioned among the parties entitled
thereto, that recently the said N. M. Thomas, and the adult heirs
of the said Nancy J. Thomas, have contracted a sale of said entire
tract of land, along with ^{owned} another tract of land, by the said N. M.
Thomas, ^{and adjacent thereto,} to one Granville Smith at the price of \$ 3000.00 for
the entire tract of 100 acres, which they all consider a fair price
for said land, and which trade they are anxious to fully consummate
and carry into effect; that your orator and the said N. M. Thomas
if said trade can be fully consummated will not claim any interest

in the fund arising from the sale of the said tract on account of their life interests therein, at least so far as the interests of the said two wards of your orator's ~~are~~ concerned, but will permit the entire amount to which they may be entitled out of the sale of the said tract, after paying the cost and expense of this suit ^{to be paid} to your orator as the guardian for said wards; that in case the said wards ~~the said C. T. Burk, David Burk & R. P. Thomas~~ should die in infancy without issue ~~you would be their only~~ heirs, and your orator, ~~not withstanding that fact,~~ is willing and anxious that the said sale to the said Smith shall be fully carried into effect, believing as he does, and here alleges, that the sale of the interest of the said wards, along with the other heirs and said N. M. Thomas, will be beneficial to the said wards, and that the money derived therefrom, free from any claim of any part thereof by the said N. M. Thomas, or by himself, which will be the sum of \$ 200.00 ^{subject to the cost & expense of this suit} will be more valuable to his said wards, if kept at interest, until they arrive at the age of twenty-one years, or invested in other real estate, than their interest in the said land will be to them after paying the taxes and expense &c. necessary to keep their said interests in repair. In fact the said tract of land can not be conveniently partitioned without giving to the said wards a small strip which would perhaps not be very valuable.

Your orator would further represent and show unto your honor that, the said N. M. Thomas and the other three heirs and your orator, with his said children and wards, intend to remove to the west, and probably to the state of Oregon, and it is his desire to remove the funds arising from the said ward's interests and take the same with him to his western home, and there invest the same for his said wards, or keep the same at interest until they arrive at the age of twenty one years. Now the object of this suit is to have the said sale to the said Smith, so far as the said infants are concerned, fully consummated and carried out, and the adults have ^{ing} all conveyed their interests in said lands to the said Smith, your orator asks that a commissioner be appointed to convey to the said Smith the said

interest of the said wards in the said tract of land, and upon such conveyance being made that the said Smith be permitted to pay at once the amount of the said infant's interest in said funds to your orator, ^{or a Commissioner} and he directed to pay out of the said sum the costs of this suit and the expense of making the said conveyance by said commissioner, and permitted to retain the balance in his hands as guardian for his said wards, and to take the same with him, and ~~either~~ invest the same in other lands, or keep the same at interest until the said wards arrive at the age of twenty-one years, which ever may be deemed most advisable by this honorable court. To this end he makes the said N. M. Thomas, C. V. Burk, Dora Burk, R. P. Thomas and Granvil^{le} Smith, and the said Ray DeBusk and Daisy DeBusk, infants, the parties defendants to this bill and asks that they be required to answer the same but not on oath, answer under oath being expressly waived, and that a guardian ad litem be appointed to appear and answer for the said infants; that on a hearing the relief above prayed for be granted, and all such other, further and general relief as may be suitable to the cause and to equity may seem meet, and your orator will ever pray &c.

Chas. H. Balch, Jr.

Virginia Lee County to wit =

I H. B. Balch a Notary Public in and for County & State aforesaid do certify that Harvey Debusk Plaintiff in this bill this day personally appeared before me in my County & State aforesaid and made oath that the facts stated in foregoing bill so far as they depend upon his own knowledge are true and so far as stated upon information derived from others he believes them to be true Given under my hand this 20th day February 1908

H. B. Balch N. P.

Laruey Delusk ^{Guar} _{et}

vs Bill in Chy.

N. M. Thomas et al.

1908 Feb. Placed on Issue
Docket, and Decree.

TO the Hon. H. A. W. Skeen, Judge of the Circuit Court for
Lee County, Virginia:

The joint and several answers of N. M. Thomas, ~~E.V.~~ Burk,
~~and~~ Burk, R. P. Thomas and Granville Smith to a bill filed in this
honorable court against these respondents and others by Harvey DeBusk
Guardian for Ray DeBusk and Daisy DeBusk, ~~For~~ answer thereto, or so
much thereof as these respondents are advised it is material for them
to answer, answering they say; That the heirs of Nancy J. Thomas,
deceased, and her interest in the tract of 200 acres of land in the
bill mentioned are correctly set forth; also the fact of the death
of Emma Debusk, mother of the two infants in the bill mentioned, and
also the further fact of the sale of the said 200 acre tract of land
to your respondent Granville Smith at the price of \$3000.00;
and also the further that it is the desire of all parties concerned,
and thought to be to the best interest of the said infants that the said
sale be fully consummated and carried into effect, so far as the said
infants are concerned. It is also a fact that should said sale be
carried into effect for the said infants and their interest in the
said tract of land conveyed to your respondent Granville Smith,
that your respondent N. M. Thomas and the plaintiff Harvey DeBusk
will claim no interest in the fund arising from the interest of the
said two infants, but are willing that the entire amount thus derived
after payment of costs of suit
to be paid over to the said plaintiff as guardian for said infants,
and these respondents allege that this will be advantageous to the
said infants; and they further allege that the price at which the
said 200 acre tract of land has been sold to the said Smith is a fair
price, and its full value; and that the said sale will be more
advantageous to the said infants than it would be to them to retain
their interest in said land, especially when their father and the oth-
er heirs and their grand-father contemplate and intend removing
to the state of Oregon, and of course, will take the said infants
with them. Now having answered as fully as they are advised it is
material for them to answer, prays to be hence dismissed with their
reasonable cost in this behalf expended, and they will ever pray &c.

One fact, for respondents,

N. M. Thomas et al

ad⁵ Answer.

Harvey Delux. Guard
7C

Filed Feb 20, 1905

H. C. Ewing, clk

In the Circuit Court for the County of Lee,
to wit:

THE ANSWER OF Ray Debusk, Ed Daisy Debusk.

infants under the age of twenty-one years, by M. G. Ely
guardian *ad litem*, assigned to defend them in this suit, to a bill of complaint exhibited against
them and others in the Circuit Court for the County of
Lee, by Harvey Debusk, Grover and others.

The respondent, reserving to themselves the benefit of all just exceptions to the said bill, for
answer thereto, answering by said guardian *ad litem*, say that they are infants of tender
years, and by reason of such disability their incapable of understanding, or of taking care of their
rights and interests, they therefore commend the same to the protection of the court, and prays that
no decree may be pronounced which will tend to their prejudice.

And having answered, the respondent pray to be hence dismissed with their reasonable costs,
in this behalf expended; and they will ever pray, &c.

M. G. Ely Guardian *ad litem*.

p. d.

Va. Lee County
OF } ss.

This day, M. G. Ely, whose name is signed to
the foregoing answer, personally appeared before me, J. W. Orr, Commissioner
and made oath that the statements made therein, so far as they depend upon his own knowledge, are true,
and so far as they depend upon knowledge derived from others he believes them to be true.

Given under my hand, this 20th day of Feb. 1905 189

James W. Orr, Comm.

Wm. Thomas et al.

adv. } ANSWER
OF
INFANT DEFENDANT.

Harvey Debusk et al

Filed Feb. 20th 1905,

H. C. T. Ewing, Clk.

Harvey DeBusk, Guardian &c.

Plaintiff.

vs.

In Chancery

N. M. Thomas, et als.

Defendants.

This cause came on again to be heard upon the papers formerly read in the cause, and report of James W. Orr, Commissioner, filed this day in the cause, and the deed therewith to Granville Smith by said commissioner, and was argued by counsel. On consideration thereof, it is adjudged, ordered and decreed that the said report and the action of the said commissioner, *in disbursing the \$200.00 in his hands* therein reported, together with the said deed to the said Smith, be and the same are hereby approved and confirmed. And the clerk of this court will deliver to the said Granville Smith the said deed for recordation, ~~and~~ the cause is continued.

Harvey Delusk. Guard
vs. Decree
N. M. Thomas et al.

Entered in C.O.
B. 8 page 1.

Enter this Decree
vs. 25-5744
Feb 25th 1905.

Harvey DeBusk Guardian for Ray DeBusk & Daisy DeBusk, Plaintiff.

Vs. In Chancery,

N. M. Thomas, et al,

Defendants .

On Motion of the plaintiff this cause is placed upon the issue docket and set for hearing, and on like motion M. G. Ely is appointed Guardian Ad Litem for the said infant defendants, and on motion leave is granted him to file their anser, which was accordingly filed, and on motion of the defendants N. M. Thomas, C. V. Burk, Dora Burk, R. P. Thomas and Granville Smith leave is granted them to file their answers which is accordingly filed, and the plaintiff replies generally to said answers, and the cause came on to be heard upon the bill of the plaintiff, the answer of the adult defendants, and the answer of the said infants/defendants byntheir guardian ad litem with replication to said answers, and the depositions of witnesses, and was argued by counsel. On consideration w thereof, and the court being of opinion that it will be to the interest of the infant defendants that the contract of the sale made by the said adult defendants of the tract of 100 acres of land in the bill mentioned to the defendant Granville Smith be fully consummated and carried into effect. It is therefor/adjudged, ordered and decreed that James W. Orr who is appointed a commissioner for the purpose *do* convey by proper deed, with covenants of special warranty, to the said Granville Smith the interest of the said infants in the said tract of land free from any claim or life estate therein upon the part of N. M. Thomas and the plaintiff, it appearing to the court from the pleadings in the cause and the depositions that they claim *no* ~~any~~ interest in the fund arising from the sale of the said infant's interest, and that the said Granville Smith pay to said commissioner the amount of the interest of the said infants in the said real estate, being the sum of \$200.⁰⁰ as shown by the said depositions, and the said commissioner pay out of the said funds the cost of this suit including a fee of \$5.00 to himself for making said

deed, andthat he pay the residue of said fund to the plaintiff *as*
guardian for the said infants, and take his receipt therefor, and
report his action hereunder to some future ~~day~~ of the present term
of the court, until which time the cause is continued.

Harvey Delusk Grant
vs ~~Wm. A. Thomas~~
et al
V. M. Thomas et al.

Entered in Chan-
cery Under Book 7
Page 578.

Entered this

James W. Shaw

Feb 26-1905

The depsoition of N. M. Thomas and S. S. Surgener taken by consent of parties at the law office of James W. Orr, in Jonesville, Virginia on the 20th day of February, 1905, and which are intended to be read on behalf of the plaintiff in a certain suit in chaceryⁿ pending in the Circuit Court of Lee County, Virginia, in which Harvey DeBusk guardian for Ray DeBusk and Daisy DeBusk is Plaintiff and N. M. Thomas et al are defendants.

PRESENT: Orr and Noel

Attorneys for plaintiff
and adult defendants.

and M. G. Ely guardian
ad litem for the infant
defendants.

The said N. M. Thomas a witness of lawful age, and being duly sworn deposes and says:

I am one of the defendants in this suit, and am sixty years old, and the grand-father of the infant defendants Ray and Daisy DeBusk. The facts set forth in the bill as to the land owned by myself and my late wife, Nancy Thomas deceased, and as to the sale contracted with Granville Smith and my intention of going West are correctly set forth. I am of opinion that it will be to the interest of the said infant defendants for their interest in the said land to be conveyed to the said Smith and the trade that has been made with him by myself and my other three children fully consummated and carried into effect by the interest of the said infants being conveyed by a commissioner to the said Smith. Their interest in the fund will be about \$200.00 subject, however, to the costs and expense of this suit. The interest of the said infants in the said real estate decended to them from their Mother Emma DeBusk, deceased, and in case of their death in infancy their heirs would be as I am informed C. V. Burk, Dora Burk and R. P. Thomas as is stated in said bill.

And further this deponent saith not.

N M Thomas

S. S. Surgen er another witness of lawful age, being duly sworn deposes and says:

I am 42 years old, and live near the land in which the two infant defendants in this suit are said to have an interest, and am well acquainted with said land, have known it for several years. I am of the opinion that it would be to the interest of the said infants for their interest in the said land to be sold along with the other parties and conveyed to the defendant Granville Smith under his contract of purchase from the adult parties who own the residue of said land, and believe that it will be more advantageous to them for the money derived therefrom to be kept at interest for them until they arrive at the age of twenty-one years or invested in other land in the west should they go there and continue to reside, than to keep their interest in the said land here, considering that in case of a partition theirs would only be a small strip or parcel and perhaps expensive to fence and keep up.

And further this deponent saith not:

S. S. Surgen

The foregoing depositions of N. M. Thomas and S. S. Surgen er were duly taken and sworn to and subscribed before me at the time and place and for the purpose therein mentioned.

Given under my hand this the 20th day of February, 1905.

W. C. Hales, J. P.

Larney Dehusk. Paid

vs. Dehusk

N. M. Thomas et al

Filed Feb 20th 1905.

H. C. Coing, Clk.

N. P. Sel. 75 cts.
" " " 25 cts.
" " " 1.00

Harvey DeBusk, Guardian &c.

Plaintiff.

vs.

In Chancery

N. M. Thomas, et als.

Defendants

The undersigned commissioner in said cause respectfully reports that pursuant to the decree entered therein on the 21st day of the present month, Granville Smith has paid to your commissioner the sum of \$200.00 as directed by said decree, and your commissioner has paid out of said fund the cost of this suit amounting to \$25.75- and the residue of said fund he has paid over to the plaintiff, Harvey DeBusk, Guardian as aforesaid, and filed his receipt herewith marked, "receipt". Your commissioner has also conveyed to the said Granville Smith by proper deed the undivided interest of the said infants in the tract of land in the bill mentioned as ordered by said decree, which deed is herewith filed as part hereof marked "Deed" for confirmation. All of which is respectfully submitted.

James W. Orr, Commr.

*Costs paid. Clerk 2.15-
Tax 1.50
Cridlin .50
Atty 16.00
Deed 6.00
N. C. 1.00
25.75-*

Harvey Delusk & Co.

vs. Comr Orr's Report.

N. M. Thomas et al.

Filed Feb 25th 1905.

J. C. Ewing, Clerk.

By M. C. H. C.

Received of James W Orr, Commissioner, in Chancery
Cause of myself against N. M. Thomas & others,
pending in Lee Circuit Court, One hundred &
Seventy four dollars & 85-Cents the amount
in said Orr's hands from the sale of the
interests of my children Ray & Daisy Delusk
in the 100 acre tract of land, after payment
of costs of suit. Feb 25th 1905.

Harvey Delusk, Guardian
for Ray & Daisy Delusk.

Harvey Delusk
Guardian
To { Rept of 174.85-
James W Orr. Comt.

Rept.

Feb 14	John Ramsey	2.50
Mar ² 1903	" Tate	.28 ✓
Mar 26 1903	John Ramsey	1.50 ✓
June ¹³ 1903	J. Hargrove	1.75
July 3 1903	Cal Petty	2.38
" 1903	Paid Bab Bush	8.00 100
Aug 15	Cal Petty	1.79
Sept ²¹ 1903	Goods for Petty	2.43
✓	W Oakley	1.90
Oct-10	Pd Cal Petty	4.50
Oct-22	Pd Cal Petty	.50

20.56

3.25

17.31

45 LR
20 SR
35
100

66
20
25
10

10

8.60

about

7.2
2.0

Memo

15 = Bill
 18 = Bill
 18 = atty.
 30 = atty.
 36 = atty.
 15 = Bill
 15 = Bill
 36 = Deere.
 40 = Large cast v.c.
 2.15 = Bill.
 1.50 = Bill.
 .50 = English Bird.
 4.15 = Bill.
 15.70 = Retained.
 5.00 = Deed retained.
 24.15 = Mary Deft's & Al. 50 - Bales.
 1.00 =
 25.15 =

208.00
 25.15 -
 \$ 174.85 -